

1 Chad W. Miller, Esq.
2 Nevada Bar No. 7823
cmiller@weidemiller.com
3 Ryan Gile, Esq.
4 Nevada Bar No. 8807
rgile@weidemiller.com
5 **WEIDE & MILLER, LTD.**
6 7251 W. Lake Mead Blvd., Suite 530
7 Las Vegas, NV 89128
8 Tel. (702) 382-4804
9 Fax (702) 382-4805

10 Attorneys for Plaintiff
11 JL Beverage Company, LLC

12 **UNITED STATES DISTRICT COURT**

13 **DISTRICT OF NEVADA**

14 JL BEVERAGE COMPANY, LLC, a Nevada) **Case No.: 2:11-cv-00417**
15 limited liability company,)
16 Plaintiff,)
17 vs.)
18 FORTUNE BRANDS INC., a Delaware) **JURY DEMAND**
19 corporation; JIM BEAM BRANDS CO. a)
20 Delaware corporation; and DOES 1 through 10,)
21 Defendants.)
22 _____)

23 Plaintiff JL BEVERAGE COMPANY, LLC, a Nevada limited liability company
24 (hereinafter, "Plaintiff"), alleges against Defendant FORTUNE BRANDS INC., a Delaware
25 corporation, and Defendant JIM BEAM BRANDS CO., a Delaware corporation (together, the
26 "Defendants"), as follows:

27 **JURISDICTION AND VENUE**

28 1. This Court has jurisdiction over this action pursuant to 15 U.S.C. §1121 (actions
arising under the Federal Trademark Act) and 28 U.S.C. 1338(a) (acts of Congress relating to
trademarks). This Court has jurisdiction over claims arising under state law in accordance with
the Court's supplemental jurisdiction pursuant to 28 U.S.C. §1337.

2. This Court has personal jurisdiction over Defendant FORTUNE BRANDS INC.

1 because said Defendant does business and/or has engaged in the acts complained of herein in
2 this Judicial District.

3 3. This Court has personal jurisdiction over Defendant JIM BEAM BRANDS CO.
4 because said Defendant does business and/or has engaged in the acts complained of herein in
5 this Judicial District.

6 4. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and
7 1391(c).

THE PARTIES

9 5. Plaintiff JL BEVERAGE COMPANY, LLC is a Nevada limited liability
10 company with its principal place of business in Henderson, Nevada.

11 6. Upon information and belief, FORTUNE BRANDS INC. is Delaware
12 corporation having its principal place of business in Deerfield, Illinois.

13 7. Upon information and belief, JIM BEAM BRANDS, CO. is Delaware
14 corporation having its principal place of business in Deerfield, Illinois.

15 8. The true names and capacities of the defendants named herein as DOES 1
16 through 10 are other parties or entities who are not currently known to Plaintiff which are liable
17 to Plaintiff for the damages complained of herein. Therefore Plaintiff sues said defendants,
18 whether individuals, corporations, or another type of entity by these fictitious names. Plaintiff
19 will seek leave of this court to amend its complaint to include the actual names of said
20 defendants when their identities are determined during the course of this litigation. Plaintiff
21 incorporates by reference herein all paragraphs of this complaint against said unknown
22 defendants.

ALLEGATIONS COMMON TO ALL CLAIMS

24 9. Since July 2004, Plaintiff has been in the business of selling high quality, bottled
25 vodka throughout the United States.

26 10. Since July 2004, Plaintiff has used the design mark JOHNNY LOVE VODKA
27 (the “JLV Mark,” identified below) in connection with and to identify its multiple flavored
28 bottled vodka as well as to distinguish its multiple flavored bottled vodka from similar alcoholic

1 beverages and distilled spirits offered by other companies:



8 11. The JLV Mark is registered with the U.S. Patent and Trademark Office as
9 Registration No. 2,986,519 (registered August 16, 2005).

10 12. Plaintiff is the owner of all right, title and interest in and to the JLV Mark, and
11 the goodwill associated therewith.

12 13. As reflected in the following photograph, Plaintiff uses the JLV Mark on the
13 front of the bottles of its line of multiple flavored vodkas in a manner where the "Lips" design
14 element of the JLV Mark prominently stands out and varies by color depending on the vodka
15 flavor:



1 14. Plaintiff has spent considerable time, effort and money to advertise and market
2 the JLV Mark in connection with Plaintiff's sale and distribution of its multiple flavored vodka
3 products throughout the United States and worldwide, including in print media, numerous third
4 party publications, and on the Internet through Plaintiff's website accessible in the United States
5 at www.johnnylovevodka.com.

6 15. By virtue of Plaintiff's extensive, continuous, and exclusive use of the JLV Mark
7 in connection with its multiple flavored vodka products, Plaintiff's JLV Mark has come to be
8 recognized and relied upon by consumers as identifying the multiple flavored vodka sold by
9 Plaintiff and distinguishing Plaintiff's vodka products from the alcoholic beverages and distilled
10 spirits of others.

11 16. By virtue of Plaintiff's extensive, continuous, and exclusive use of the JLV Mark
12 in connection with its vodka products, Plaintiff's JLV Mark has become distinctive and
13 exclusively associated with Plaintiff's vodka products.

14 17. By virtue of Plaintiff's extensive, continuous, and exclusive use of the JOHNNY
15 LOVE Mark in connection with its multiple flavored vodka products, Plaintiff has developed
16 substantial goodwill in the JLV Mark throughout the United States and as a result, the JLV
17 Mark has come to be associated exclusively with Plaintiff and Plaintiff's vodka products.

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1 18. Upon information and belief, Defendants have recently begun promoting and
2 selling a line of multiple flavored vodka products (the “Infringing Goods”) under the mark
3 PUCKER using a bottle design that includes a prominent lip design on the center of the vodka
4 bottles (the “Infringing Mark”) which varies by color depending on the vodka flavor:

Introducing Pucker Vodka



Sour Apple
The vibrant taste of crisp green apples delivers a taste sensation that you won't soon forget.

Cherry Tease
Enjoy an 'anything but
ordinary' cherry teased with
the taste of wild berries.

Grape Gone Wild
Drive your taste buds wild
with intensely flavorful sweet
grapes.

Make your mouth water with the tantalizing and aroma of juicy, squeezed orange



19. The Infringing Mark is nearly identical in appearance to the JLV Mark, including varying by color depending on the vodka flavor, and thus likely to be confused with Plaintiff's own goods marketed using the JLV Mark which varies by color depending on the vodka flavor.

20. The nature of Defendants' Infringing Goods are identical to type of goods sold by Plaintiff using the JLV Mark, namely vodka and particularly multiple flavored vodkas.

21. Defendants' Infringing Mark is likely to be perceived as the same or similar to Plaintiff's JLV Mark by consumers who are likely to believe that the source and origin of the Infringing Goods emanate from or are sponsored by or affiliated with Plaintiff.

22. Upon information and belief, Defendants, by using the Infringing Mark to promote their multiple flavored vodka products, is attempting to trade on Plaintiff's business, reputation and goodwill in its JLV Mark.

23. Upon information and belief, Defendants' choice of the Infringing Mark to identify the Infringing Goods was done willfully, intentionally, and deliberately with full knowledge and willful disregard of Plaintiff's well-known and prior established rights in the JLV Mark with respect to Plaintiff's vodka products.

24. Unless enjoined by this Court, Defendants' continued use of the Infringing Mark in connection with Defendants' Infringing Goods is likely to cause consumers to be confused, mistaken, or deceived as to the affiliation, connection or association of Defendants' Infringing Goods with Plaintiff and as to the origin, sponsorship, or approval of Defendants' Infringing Goods by Plaintiff.

FIRST CLAIM FOR RELIEF

(Federal Trademark Infringement Under 15 U.S.C. §1114)

25. Plaintiff hereby realleges and incorporates by reference the allegations of each of the paragraphs of this Complaint as if fully set forth herein.

26. This is a claim for trademark infringement under Section 32 of the Lanham Act,
15 U.S.C. § 1114.

27. Defendants' Infringing Mark is a colorable imitation of Plaintiff's federally registered JLV Mark and Defendants' use of the Infringing Mark in connection with the

1 advertising and promotion of the Infringing Goods is without permission, authority or consent
2 of the Plaintiff and said use is likely to cause confusion, to cause mistake and/or to deceive.

3 28. Defendants' use of the Infringing Mark in connection with the advertising and
4 promotion of the Infringing Goods has been made willfully and deliberately notwithstanding
5 Plaintiff's well-known and prior established rights in its federally registered JLV Mark and with
6 both actual and constructive notice of Plaintiff's federal registration rights under 15 U.S.C.
7 §1072.

8 29. Upon information and belief, Defendants' infringing activities have caused and,
9 unless enjoined by this Court, will continue to cause, irreparable injury and other damage to
10 Plaintiff's business, reputation and goodwill in its federally registered JLV Mark for which
11 Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(False Designation of Origin and Unfair Competition under 15 U.S.C. § 1125(a))

14 30. Plaintiff hereby realleges and incorporates by reference the allegations of each of
15 the paragraphs of this Complaint as if fully set forth herein.

16 31. This is a claim for false designation of origin and unfair competition under
17 Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

18 32. Defendants' use of the Infringing Mark constitutes a false designation of origin, a
19 false or misleading description and representation of fact which is likely to cause confusion and
20 to cause mistake, and to deceive as to the affiliation, connection or association of Defendants
21 with Plaintiff and as to the origin, sponsorship, or approval of Defendants' Infringing Goods and
22 commercial activities by Plaintiff.

23 33. Upon information and belief, Defendants' selection and use of a mark that is
24 confusingly similar to Plaintiff's JLV Mark in connection with Defendants' Infringing Goods
25 was done willfully, intentionally, and deliberately with full knowledge and willful disregard of
26 Plaintiff's well-known and prior established rights in the JLV Mark.

27 34. As a direct and proximate result of Defendants' false designation of origin and
28 unfair competition, Plaintiff has suffered, and unless enjoined by this Court will continue to

1 suffer, monetary loss and irreparable injury and other damage to Plaintiff's business, reputation
2 and goodwill in Plaintiff's JLV Mark for which Plaintiff has no adequate remedy at law.

3 **THIRD CLAIM FOR RELIEF**

4 **(Common Law Trademark Infringement and Unfair Competition)**

5 35. Plaintiff hereby realleges and incorporates by reference the allegations of each of
6 the paragraphs of this Complaint as if fully set forth herein.

7 36. This is a claim for trademark infringement and unfair competition arising under
8 the common law of the State of Nevada.

9 37. By virtue of having used and continuing to use the JLV Mark in commerce,
10 Plaintiff has acquired common law trademark rights in the JLV Mark.

11 38. Defendants' intentional use of a mark identical and/or confusingly similar to the
12 JLV Mark infringes upon Plaintiff's common law trademark rights in the JLV Mark and is
13 likely to cause confusion, mistake, or deception among consumers, who will believe that
14 Defendants' Infringing Goods originate from, or are affiliated with, or are endorsed by Plaintiff,
15 when, in fact, they are not.

16 39. By virtue of the acts complained of herein, Defendants have intentionally caused
17 a likelihood of confusion among the public and have unfairly competed with Plaintiff in
18 violation of the common law of the State of Nevada.

19 40. Defendants' aforementioned acts have been fraudulent, oppressive and
20 malicious, and have injured Plaintiff and damaged Plaintiff in an amount to be determined at
21 trial.

22 41. As a direct and proximate result of Defendants' common law trademark
23 infringement and unfair competition, Plaintiff has suffered, and unless enjoined by this Court
24 will continue to suffer, monetary loss and irreparable injury and other damage to Plaintiff's
25 business, reputation and goodwill in the JLV Mark for which Plaintiff has no adequate remedy
26 at law.

27 42. As a direct and proximate result of Defendants' common law trademark
28 infringement and unfair competition, Plaintiffs have been forced to retain counsel to prosecute

1 this claim and is entitled to recover its attorneys' fees and costs incurred herein.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff respectfully prays for judgment against Defendants as follows:

4 A. That the Court enter judgment in favor of Plaintiff and against the Defendants on
5 all claims for relief alleged herein;

6 B. That a preliminary and permanent injunction issue pursuant to Section 34 of the
7 Lanham Act (15 U.S.C. §1116) enjoining and restraining the Defendants and their respective
8 owners, parent companies, subsidiary companies, related companies, successors, assigns,
9 officers, directors, agents, employees and attorneys, and all persons or entities in active concert,
10 participation, or privity with any of them, from using, on or in connection with the manufacture,
11 sale, importation, exportation, purchase, order, offer for sale, distribution, transmission,
12 advertisement, display and promotion of any products or services, the JLV Mark or other marks
13 that are confusingly similar to the JLV Mark, including but not limited to the Infringing Mark;

14 C. That Defendants be ordered immediately to recall any and all Infringing Goods
15 and any other packaging, containers, advertising or promotional material or other matter that
16 display the JLV Mark or other marks that are identical or substantially similar to the JLV Mark,
17 including but not limited to the Infringing Mark;

18 D. That Defendants be ordered to deliver to Plaintiff for destruction any and all
19 Infringing Goods as well as any other packaging, containers, advertising or promotional
20 material or other matter bearing the Infringing Mark pursuant to 15 U.S.C. §1118;

21 E. That Defendants be directed to file with this Court and serve on Plaintiff within
22 thirty (30) days after the service of the injunction, a report, in writing, under oath, setting forth
23 in detail the manner and form in which the Defendants have complied with the injunction
24 pursuant to 15 U.S.C. §1116;

25 F. That Defendants be required to account to Plaintiff for any and all profits derived
26 by Defendants and all damages sustained by Plaintiff by virtue of the actions of the Defendants
27 complained of herein;

28 G. That Defendants be ordered to pay over to Plaintiff any and all profits derived by

1 Defendants and all damages which Plaintiff has sustained as a consequence of the actions of the
2 Defendants complained of herein pursuant to 15 U.S.C. §1117, subject to proof at trial;

3 H. That the damages resulting from the actions of the Defendants complained of
4 herein be trebled pursuant to 15 U.S.C. §1117 and awarded to Plaintiff;

5 I. That an award of interest, reasonable costs, expenses and attorneys' fees be
6 awarded to Plaintiff pursuant to 15 U.S.C. §1117;

7 J. That an award of interest, costs, and attorneys' fees incurred by Plaintiff in
8 prosecuting this action be awarded to Plaintiff; and

9 K. That Plaintiff be awarded all other relief to which Plaintiff is entitled and such
10 other and further relief as this Court may deem just.

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12 **JURY TRIAL DEMANDED**

13 Plaintiff hereby demands a trial by jury on all issues raised in the Complaint which are
14 triable by a jury.

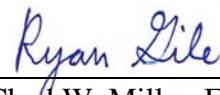
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16 DATED this 18th day of March, 2011.

17

18 Respectfully Submitted,

19 **WEIDE & MILLER, LTD.**

20 
21 Chad W. Miller, Esq.
22 Ryan Gile, Esq.
23 7251 W. Lake Mead Blvd., Suite 530
24 Las Vegas, NV 89128
Attorneys for Plaintiff
JL Beverage Company, LLC